
Transportation Committee

HB 1947

Brief Description: Concerning the regulation and preservation of urban streets through a local option street utility.

Sponsors: Representatives Simpson, Wood, Flannigan, Upthegrove and Ormsby.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Authorizes incorporated cities and towns to establish a street utility to provide street utility services.

Hearing Date: 2/17/09

Staff: Jerry Long (786-7306)

Background:

City revenues for transportation are derived largely from charges for services, state and federal shared revenues, property taxes, business and utility taxes, local improvement districts, and sales tax. There are 241 incorporated cities and towns, approximately 36,000 city lane miles, 17,000 city centerline miles, and over 40,000 daily vehicle city miles traveled.

In 1990 the Legislature authorized local option taxes for transportation purposes. The options included: a local option fuel tax (10 percent of state rate); a vehicle license fee (up to \$15); commercial parking tax (no fixed rate); a street utility charge (up to \$2 per employee or household); an employer tax (up to \$2 per employee); a motor vehicle excise tax (MVET) for high occupancy vehicle lanes (up to 15 percent of state base rate); an MVET for high capacity transportation systems (.8 percent of vehicle value); and a sales and use tax for high capacity transportation systems (1 percent of purchase price).

In 1995 the Washington Supreme Court considered the constitutionality of the city street utility charge in *Covell v. City of Seattle*. The court concluded that the street utility charge was not a valid fee, but rather a tax on property that violated the state Constitution's uniformity clause.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

On November 5, 2002, Initiative 776 repealed the local option vehicle license fee and the MVET for high capacity transportation systems. Initiative 695 and Initiative 747 also impacted funding that was available to local government.

In 2006 Transportation Benefit Districts were authorized and the district could implement up to a \$20 vehicle fee without voter approval, up to a \$100 vehicle fee with voter approval, up to a .2 percent sales tax, and impact fees on commercial and industrial development to help finance transportation improvements.

Summary of Bill:

The bill authorizes the legislative authority of an incorporated city or town to establish a street utility to provide street utility service and to own and operate the street utility. Street utility services include designing, condemning, constructing, owning, managing, maintaining, operating and preserving roads, streets, sidewalks, and other improvements. The city legislative authority is the governing body of the street utility. A charge is based on how many trips a customer uses in the system.

Legislative authority is required to conduct a public hearing prior to the formation of the street utility. The public hearing notice must include:

- a proposal explanation that includes the general proposed plan for the service with proposed utility rates; a description of the proposed area or areas included; and any other pertinent information, and
- a proposal may include the condition of pavement, along with scores and field investigations.

The public notice:

- must be published once a week for two consecutive weeks in a newspaper within the proposed utility service area; and
- may, alternatively, be one publication, combined with the information on a government cable television channel at least 10 times in a two-week period and also on the city's web site.

At the conclusion of the hearing, the city may modify the proposal based on the comments and data that they receive. The city may adopt an ordinance creating the utility along with rates.

The street utility ordinance must include a:

- finding that the creation of the utility is in the interest of public health and safety supported by findings and other information;
- finding that the utility will allocate the burdens placed on the streets by different users and benefits to the different users;
- description of the utility, along with rates, to be designated by residential and business; and
- provision that a Street Utility Advisory Committee may be established to advise the city.

Membership is limited to seven, a majority of which must be city residents and may include: paving contractors; civil engineers; traffic engineering staff; and persons with training and expertise in the issue areas.

The street utility ordinance may include:

- a description of the pavement condition;
- proposed timetables for the utility services;
- a summary of the services; and
- a budget, including projected revenues from the utility rates and other relevant factors.

Street utility rates only apply to residents and businesses in the utility service areas. Rates may be expressed as a dollar amount per trip by type of household or business. Rates set for other than households may be in equivalents of household units or specified by ordinance.

When establishing rates, the following factors may be considered:

- the cost for the utility's base level operation;
- variations in capacity access demands;
- the estimated number of vehicle trips by type of users;
- the correlation between property uses and trips; and
- user location, times of use, type of vehicles, and differences in operational and capital costs.

Only a base rate is assessed for undeveloped property; rates must not include an exemption or credit for the payment of any tax; a city:

- may reduce or exempt rates for low income citizens;
- may reduce or exempt rates on government entities that are providing for street services and improvements; and
- may provide for rate mitigation for combined trips and user rate reductions based on trip reductions.

The utility rates may supplement, but not duplicate or replace transportation impact fees funding new growth. The rates are not to be computed on the value of the underlying real property or the improvements to the property. The rates are not intended to be tolls, but if a court determines them to be tolls, legislative approval is granted. The street utility may be funded by rates or any other lawful revenue source.

All street utility rate revenues must be deposited in a special fund or account dedicated to permissible services.

A city may provide billing and collection as part of or separate from other utility services the city provides. The ordinance may include a penalty for rates 60 days past due, but not to exceed 1 percent per month on the unpaid balance. All unpaid street utility rates may be collected against the owner, tenant, or occupant. As a supplemental remedy, the ordinance may place a lien against the real property which can be foreclosed in the manner of a lien for labor and materials furnished on the premise. The lien may not exceed 12 months of unpaid rates plus penalties.

The ordinance must include a provision for a user to appeal a rate or rate classification. Appeals must be considered by a three-member board serving staggered three-year terms appointed by

the Chief Executive Officer of the city with the legislative authority approval. A reasonable charge, not to exceed the actual cost of the appeal, may be required to be paid by an appealing ratepayer. Appeals from decisions of the board must be made directly to the superior court. Board members serve without compensation and staff support is provided for their administrative needs.

The legislative authority may dissolve a street utility by ordinance and any expended funds must be used for the purpose in which the street utility was established for.

The existing and obsolete statutes are repealed regarding street utilities.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on August 1, 2009.